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Serial No. 10/079,192
Attorney Docket: 6081-005
Customer No. 29,335Remarks

This Draft amendment and response is being filed for consideration with an Examiner's Interview to be conducted April 22, 2008 at 2 p.m. EST with Examiner Loney. Applicant has amended Claims 28 and 34. No new matter has been entered by these amendments.

Argument

I. Examiner's Rejection of Claims 28-37 under 35 USC §112, 1st Paragraph is Legally Inappropriate

The Examiner has rejected claim 28-37 as failing to comply with the written description requirement by stating that the specification fails to provide support for the first and second flexible films being undulating per claims 28, 30, 34, and 37. "Undulating" is defined as "to move with a sinuous or wavelike motion; display a smooth rising-and-falling or side-to-side alternation of movement". www.dictionary.com. The specification states that insulative pockets 18 extend downward in outer layer 14 from one quarter to one half inch approximately, and extend upward in bottom outer layer 16. Page 9 of the present application, lines 16-19. Such a downward and upward display of outer layer 14 and 16, respectively, indicates a rising-and-falling alternation of movement. Figure 2 shows the first and second flexible films 22 and 24 in such an undulating configuration, where the insulative pockets 18 extend substantially downward from upper film 20 and insulative pockets 18 extend substantially upward from film 26. Pages 9-10 of the present application. The Examiner even states "Figures 2-4 may be somewhat undulating, however, this is a cross-sectional view therefore the film is not actually undulating". Nonfinal Office Action 01/24/08, Page 2, ¶3. An undulating configuration is perhaps best shown by a cross-sectional view, Applicant respectfully request the Examiner to provide evidence of what view supports an undulating configuration. If the Examiner is stating a finding of fact, then the Applicant requests that the Examiner come forward with specific evidence, as required by administrative proceedings. See MPEP §2144.03, "Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known". Contrarily, the cross sectional view displays such an undulating feature of

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the first and second flexible films. Therefore, there is proper support for the first and second flexible films being undulating. The Examiner is reminded that there is no *in haec verba* requirement, newly added claim limitations must be supported in the specification through express, implicit, or inherent disclosure. MPEP §2163. However, in light of moving prosecution forward, the Applicant has amended Claim 28 to include the "undulating film in a cross-sectional view". Applicant submits this amendment in consideration for the Examiner's interview.

The Examiner also states that the specification fails to provide support for the "heat reflective elements dispersed throughout" a film per claims 28, 29, 30, 31, 34, 35, and 37. However, the specification states that the flat film 26 and 27 is impregnated or coated with a heat reflective material, such as flecks of aluminum or other heat reflective flecked material or pigments. Page 10 of the present application, lines 8-18. "Flecks of aluminum" or "heat reflective flecked material" or "pigments" provides support for "elements". "Elements" is defined as "a component or constituent of a whole". www.dictionary.com. "Flecks of aluminum" or "heat reflective flecked material" or "pigments" are components or constituents of the film. Moreover, the Examiner states that "elements" could encompass other things, i.e. mirrors, not supported by the specification, however, the Examiner fails to acknowledge that the specification need not support other things, i.e. mirrors, only that which is claimed by Claims 28, 29, 30, 31, 34, 35, and 37. The Applicant respectfully requests the Examiner to cite to some law, regulation, or rule stating that the specification has to support other things that are not supported in the specification. Again, the Applicant notes that the specification does not have to encompass other reflective elements, but rather encompasses the reflective material as disclosed in the specification and claimed. Therefore, the specification provides proper support for heat reflective elements dispersed throughout a film.

The Examiner also states that the specification fails to provide support for the second moisture impervious film having an additional reflective coating thereon per Claim 29. While the specification does state that the film may be impregnated or coated with a heat reflective material, such as flecks of aluminum, an aluminum pigmented coating, or other heat reflective flecked material or pigments, the specification does not exclude the combination of the heat reflective material dispersed within the film and a coating thereon. "Or" is defined as "used to connect words, phrases, or clauses representing alternatives". www.dictionary.com. The

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alternative of "heat reflective material being dispersed" or the alternative as a coating is stated in the specification; however, nowhere does the specification indicate that the heat reflective material being dispersed and the coating cannot be combined. Again, the Applicant respectfully requests the Examiner to refrain from reading language into the specification. Therefore, the specification provides proper support for Claim 29's second moisture impervious film having an additional reflective coating thereon.

Finally, the Examiner has stated that the specification fails to provide support for the "nonstick" recitation in Claim 33. The specification provides proper support for the nonstick limitation where bottom layer 16 has a smooth surface as to not adhere to the curing concrete nor leave any marks on the associated concrete surface. The Examiner is reminded that there is no *in haec verba* requirement, newly added claim limitations must be supported in the specification through express, implicit, or inherent disclosure. MPEP §2163. Such a disclosure of "smooth surface as to not adhere to the curing concrete" makes it readily apparent that the bottom layer includes a nonstick surface to one of ordinary skill in the art.

II. Examiner's Rejection of Claims 28-31 and 33-37 under 35 USC §103(a) as being unpatentable over Hines, Edgel, or Hunter in view ADPA or Kern is legally inappropriate

The Examiner has stated that all of the primary references teach first and second moisture impervious films with a first and second undulating film applied thereto per Claims 28 and 34 and forms a structure of two bubble type laminates facing one another as shown in applicant's Figures 1 and 2. First, the Applicant objects to the Examiner's characterization of Claims 28 and 34 as drawn to Figures 1 and 2. Hines, Edgel, and Hunter do not contain each and every limitation of Claims 28 and 34. Claims 28 claims "a plurality of open spaces between the second air-filled insulative pockets and the first air-filled insulative pockets, wherein the open spaces between the first air-filled insulative pockets communicate with the heat reflective elements in the second moisture-impervious outer film in a heat transfer path as to form a flexible heat reflective concrete cure blanket". Claim 34 claims "a plurality of heat reflective elements dispersed throughout the second unslitted moisture-impervious outer film as to reflect heat away from the second flexible structure through a plurality of open spaces between the first bubble-

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type insulative layer". Hines, Edgel, and Hunter are silent to the respective elements in Claims 28 and 34; therefore, Hines, Edgel, and Hunter, in view of Kern, do not render Claims 28 and 34 obvious.

The Examiner states that by the very nature of Hines, Edgel, Hunter, Brockhaus, Handwerker, and Aanestad disclosing two layers as a bubble layer, there would at least be space where there are no bubbles in the films. The Examiner uses Hines to indicate that there is a space between the sheets at 34, where the bubble film contacts the flat sheet 22 in Figure 2 of Hines. The space 34 between the sheets in Hines is not between a second air-filled insulative pocket and a first air-filled insulative pocket, wherein the open spaces communicate in a heat transfer path. The space 34 in Hines is between air pockets 32 in the first layer 22 and does not create a heat transfer path communicating between a first and second layer. Hines discloses a reflective layer 24 in between the first layer 22 and the second layer 24, thereby preventing any space 34 from communicating in a heat transfer path between the first layer 22 and the second layer 24 in Hines.

Additionally, there is no motivation, suggestion, or teaching to substitute one reflective layer for another reflective layer to render Claims 28-31 and 33-37 obvious. There must be some suggestion, teaching, or motivation that would have led a person of ordinary skill in the art to combine the relevant prior art teachings in the manner claimed. *Tec Air, Inc. v. Denso Mfg. Mich. Inc.*, 192 F.3d 1353, 1359-60 (Fed. Cir. 1999); *Pro-Mold & Tool Co. v. Great Lakes Plastics, Inc.*, 75 F.3d 1568, 1572 (Fed. Cir. 1996), emphasis added. The Examiner stated that it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute one reflective layer for another as the outer layer, as taught to be known by the ADPA, motivated by the fact that the Hines, Edgel, and Hunter ("primary references") teach the outer layer to be reflective. The Examiner indicates that Kern discloses it is known to include metal particles in plastic film in order to provide reflectivity thereto; however, this shows no motivation for substituting one known way of imparting reflective to a film with another way. The Applicant respectfully requests the Examiner come forward with specific evidence of such substitution in the cited prior art references. If the Examiner is stating a finding of fact, then the Applicant requests that the Examiner come forward with specific evidence, as required by administrative proceedings. See MPEP §2144.03, "Official notice unsupported by documentary

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evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known".

Moreover, there is no motivation to combine the Kern Reference with Hines, Edgel, or Hunter. Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so. *In re Kahn*, 441 F.3d 977, 986-78 USPQ2d 1329, 1335 (Fed. Cir. 2006). The Kern reference is for organic and inorganic pigment concentrates and pelletized metal pigment product. Hines, Edgel, and Hunter provide no showing or disclosure of metal resin pellets. Accordingly, the obviousness rejection for Claim 32 under 35 USC §103(a) is legally insufficient.

Lastly, the Applicant objects to the Examiner citing Page 10 of the specification wherein the Applicant refers to an example of a suitable reflective material being available. The specification provides examples of suitable reflective material in order to comply with the written description and enablement requirement. Again, the Examiner is inappropriately applying statements and implying a motivation to combine Applicant's own disclosure in an obviousness rejection. Respectfully, Applicant requests the Examiner to withdraw such statements for an obviousness rejection.

III. Examiner's Rejection of Claims 28-31 and 33-37 under 35 USC §103(a) as being unpatentable over Brockhaus, Handwerker, or Aanstad in view of ADPA or Kern is legally inappropriate

The Examiner has stated that Brockhaus, Handwerker, or Aanstad ("all primary references") teach first and second moisture impervious films with a first and second undulating film applied thereto per Claims 28 and 34 and forms a structure of two bubble type laminates facing one another as shown in applicant's Figure 1 and 2. First, the Applicant objects to the Examiner's characterization of Claims 28 and 34 as drawn to Figures 1 and 2. It is important not to import into a claim limitations that are not part of the claim. MPEP §2111.01, citing *Superguide Corp. v. DirectTV Enterprises, Inc.*, 358 F.3d 870, 875, 69 USPQ2d 1865, 1868 (Fed. Cir. 2004). Secondly, Brockhaus, Handwerker, Aanstad, and Kern do not contain each and

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every limitation of Claims 28 and 34. Claims 28 claims "a plurality of open spaces between the second air-filled insulative pockets and the first air-filled insulative pockets, wherein the open spaces between the first air-filled insulative pockets communicate with the heat reflective elements in the second moisture-impervious outer film in a heat transfer path as to form a flexible heat reflective concrete cure blanket". Claim 34 claims "a plurality of heat reflective elements dispersed throughout the second unslitted moisture-impervious outer film as to reflect heat away from the second flexible structure through a plurality of open spaces between the first bubble-type insulative layer". Brockhaus, Handwerker, Aanestad is silent as to the respective elements in Claims 28 and 34; therefore, Brockhaus, Handwerker, Aanestad in view of Kern do not render Claims 28 and 34 obvious.

Additionally, there is no motivation, suggestion, or teaching to substitute one reflective layer for another reflective layer to render Claims 28-31 and 33-37 obvious. There must be some suggestion, teaching, or motivation that would have led a person of ordinary skill in the art to combine the relevant prior art teachings in the manner claimed. *Tec Air, Inc. v. Denso Mfg. Mich. Inc.*, 192 F.3d 1353, 1359-60 (Fed. Cir. 1999); *Pro-Mold & Tool Co. v. Great Lakes Plastics, Inc.*, 75 F.3d 1568, 1572 (Fed. Cir. 1996), emphasis added. The Examiner stated that it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute one reflective layer for another as the outer layer, as taught to be known by the ADPA, motivated by the fact that the Brockhaus, Handwerker, or Aanestad teach the outer layer to be reflective. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). None of the prior art references suggest that the one reflective layer may be substituted for another. The Examiner indicates that Kern discloses it is known to include metal particles in a plastic film in order to provide reflectivity thereto; however, this shows no motivation for substituting one known way of imparting reflectivity to a film with another way. The Applicant respectfully requests the Examiner come forward with specific evidence of such substitution in the cited prior art references. If the Examiner is stating a finding of fact, then the Applicant requests that the Examiner come forward with specific evidence, as required by administrative proceedings. See MPEP §2144.03, "Official notice unsupported by documentary evidence should only be taken by

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the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known".

Finally, there is no motivation to combine the Kern Reference with Brockhaus, Handwerker, or Aanestad. The Kern reference is for organic and inorganic pigment concentrates and pelletized metal pigment product. Brockhaus, Handwerker, or Aanestad provide no motivation to combine Kern, as Brockhaus, Handwerker, or Aanestad provide no showing of disclosure of pelletized metal pigment product. Accordingly, the obviousness rejection for Claim 32 under 35 USC §103(a) is legally insufficient.

IV. Examiner's Rejection of Claim 32 under 35 USC §103(a) as being as being unpatentable over Brockhaus, Handwerker, or Aanestad in view of ADPA or Kern and Sheridan is legally inappropriate

While the specifically claimed elements in Claim 32 is broader than the specific disclosure in the Sheridan Reference, the patentability of Claim 32 is based upon the patentability of independent Claim 28, as discussed above. Accordingly, the obviousness rejection for Claim 32 under 35 USC §103(a) is legally insufficient.

Conclusion

In light of the preceding discussion, Applicant submits the following claims 28-37 contain patentable subject matter. On this basis, Applicant respectfully submits that the Examiner should allow such claims.

Respectfully submitted,

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